[redacted]

No. 510

[redacted]

Appellants,

[redacted]

Appellees.

On Appeal from the Court of Appeals of the State of New York

JURISDICTIONAL STATEMENT

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. 10

IRVING STRAUSS, HAROLD SOLODAR, HARRY SCHILLING, CHARLES KRAUSS, and SAMUEL W. BEHRMAN,
Appellants,

v.

THE UNIVERSITY OF THE STATE OF NEW YORK, ALEXANDER J. ALLEN, JR., GEORGE HOPKINS BOND, JOHN F. BROSNAN, EDGAR W. COUPER, EDWARD R. EASTMAN, CAROLINE WERNER GANNETT, JACOB L. HOLTZMANN, W. KINGSLAND MACY, DOMINICK F. MAURILLO, WELLS V. MOOT, JOHN P. MYERS, ROGER W. STRAUS, and WILLIAM J. WALLIN as members of the Board of Regents and HAROLD R. BARNES, F. EARLE CUSHING, HAROLD J. FISHER, LELAND D. LYON, and CLARENCE C. ROGERS as members of the State Board of Examiners in Optometry,
Appellees.

On Appeal from the Court of Appeals of the State of New York

JURISDICTIONAL STATEMENT

Appellants appeal from a judgment of the Court of Appeals of the State of New York modifying the judgment of the Appellate Division, Third Department, which affirmed a judgment entered in the Supreme Court, Albany County, granting judgment for

Appellees, and submit this Statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that substantial questions are presented.

OPINIONS BELOW

The opinion of the New York Court of Appeals is reported at 2 N.Y. 2d 464, and is printed as Appendix A to this Statement. The majority and dissenting opinions of the Appellate Division, Third Department, are reported at 2 App. Div. 2d 179. The decision of the Supreme Court, Albany County, was not reported.

JURISDICTION

(1) This is an action for a declaratory judgment and injunctive relief, brought pursuant to Sections 255, 473, 877, *inter alia*, of the New York Civil Practice Act by five optometrists licensed to practice in the State of New York on behalf of themselves and all others similarly situated, against members of the University of the State of New York, the New York Board of Regents and the State Board of Examiners in Optometry, contesting the constitutionality and legality of a regulation designated as paragraph (g) of subdivision 1, of Section 70, Article VIII, of the Regulations of the Commissioner of Education relating to Optometry, adopted by the Board of Regents on June 15-16, 1950, regulating the use of signs and displays by optometrists. The text of this Regulation is set forth at pp. 4-5, *infra*.

(2) The judgment of the Court of Appeals was entered on March 8, 1957 (Appendix B, *infra*); and a motion for reargument and to amend the remittitur was denied on May 23, 1957 (Appendix C, *infra*). A

notice of appeal was filed with the Clerk of the Supreme Court, Albany County, on July 15, 1957.[1]

(3) The jurisdiction of this Court is invoked under 28 U.S.C. § 1257 (2).

(4) Cases believed to sustain the jurisdiction of this Court are *Lake Erie & W.R.R.* v. *Pub. Util. Comm.*, 249 U.S. 422; *Live Oak Assn.* v. *R.R. Commission*, 269 U.S. 354; *Hamilton* v. *Regents*, 293 U.S. 245; and *Atchison R. Co.* v. *Pub. Util. Comm'n.*, 346 U.S. 346.

QUESTIONS PRESENTED

(1) Where, after more than six years of litigation in which Appellants sought a judgment declaring a regulation promulgated by a state body to be invalid; and

Where the challenged regulation was amended *after* argument in the highest court of the state; and

Where the highest court of the state sustained the validity of the *amended* regulation; and

Where Appellants have never had an opportunity to be heard with respect to the validity of the amended regulation;

Have Appellants been denied the due process of law guaranteed them by Amendment XIV of the Constitution of the United States?

(2) Does a state regulation limiting the use of certain types of signs violate Amendment XIV where

---

[1] On September 9, 1957, Justice Bookstein of the Supreme Court, Albany County, extended the time for filing the record and docketing the appeal to and including November 12, 1957 (Appendix D, *infra*).

it is directed against optometrists only and does not impose the same limitations upon persons in other professions or businesses performing essentially the same services or functions?

CONSTITUTIONAL PROVISIONS, STATUTES AND REGULATIONS INVOLVED

Amendment XIV of the Constitution of the United States provides in relevant part:

> "nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Section 7108 of the New York Education Law provides in relevant part as follows:

> "The department shall have power to revoke the license, certificate of registration or certificate of exemption of any optometrist upon proof that the holder thereof has been guilty of unprofessional conduct, or of any fraud, deceit or misrepresentation in his practice or in his advertising * * *"

Article VIII, Section 70, of the Regulations of the Commissioner of Education, relating to OPTOMETRY, adopted on June 15-16, 1950, provides in relevant part as follows:

> "Definitions
>
> 1. *Unprofessional conduct, fraud and deceit.* Unprofessional conduct, fraud, deceit or misrepresentation in the practice of optometry under sections 7108 and 7111 of the Education Law shall include but shall not be limited to the following:
>
> * * *
>
> g. Advertising by means of large display, glaring, illuminated or flickering signs or by means of

any sign containing as a part thereof the representation of the human eye or any portion of the human head or the representation of spectacles, eyeglasses, frames or mountings. A large display sign shall mean a sign containing letters exceeding six inches in height on the first or ground floor and eight inches in height on the second floor or above and exceeding one foot by three feet overall. The use by an optometrist of more than five signs shall also be deemed a large display. An illuminated sign shall mean a sign lighted or self-luminous by any means whatever, or giving the outward appearance of same."

The Amendment to the foregoing, approved on January 25, 1957, provided as follows:

"Article VIII, section 70, subdivision 1, paragraph g, of the Regulations of the Commissioner of Education, relating to OPTOMETRY, amended by adding the following sentence at the end thereof:

"Nothing herein contained shall be deemed to prevent the illumination of a sign setting forth the name of the practictioner and the word 'optometrist' provided that the illumination is not colored and such sign does not otherwise conflict with this regulation."

STATEMENT OF FACTS

The facts of this case fall into two separate and distinct stages: those which existed under the original regulation of June 15-16, 1950, and throughout more than six years of litigation including the argument in the Court below on January 24, 1957; and those under the amended regulation, adopted on January 25, 1957, the day following the argument in the Court below.

1. Appellants are five optometrists who brought suit on behalf of themselves and all others similarly

situated; and Appellees are public officials of New York State who are concerned with the regulation of the profession of optometry. On June 15-16, 1950 a regulation was adopted by the Board of Regents, the members of which are included among the Appellees, which restricted the use of advertising displays and signs by licensed and registered optometrists, by defining their use as unprofessional conduct and thereby subjecting offending optometrists to loss of license. The regulation defined as unprofessional conduct: "Advertising by means of large display, glaring, illuminated or flickering signs or by means of any sign containing as a part thereof the representation of the human eye, or any portion of the human head, or the representation of spectacles, eye-glasses, frames, or mountings." The regulation defined the size of permissible signs and displays, the number of signs which an optometrist could use, and defined illumination. The regulation is set forth in full at pp. 4-5, *supra*. The regulation applied solely to optometrists; it did not apply to persons in any of the other professions or businesses performing essentially the same functions or services.

On January 15, 1951, official notice was given that "rigid enforcement" of this regulation would be undertaken on April 15, 1951. (R. 16). On March 29, 1951, Appellants commenced this suit, seeking a declaration that the regulation was unconstitutional and illegal, and an injunction against its enforcement (R. 3 *et seq.*). An injunction *pendente lite* was granted on July 13, 1951 (R. 95), and affirmed on appeal on November 17, 1952. 280 App. Div. 1017. Thereupon, Appellees moved for judgment on the pleadings, but their motion was denied (R. 98); and the denial was

affirmed on appeal on November 12, 1953. 282 App. Div. 593.

Appellants attacked the regulation under both state and federal law. Their contentions under federal law were based upon the Fourteenth Amendment to the Constitution of the United States. Appellants alleged that there was no basis or authority in law or in fact for the regulation; or for regulating optometrists exclusively while leaving those persons in other professions and businesses performing essentially the same functions and services free of any such regulation. Appellants raised these contentions in Paragraph Nineteenth of their Complaint (R. 13-14). This contention was expressly decided against Appellants in the Supreme Court (R. 87), and in the Appellate Division (R. 115).

In each of the three New York State Courts, the evidence presented, the arguments made, the briefs submitted, and the facts and the issues of law considered, were all directed towards the 1950 regulation.

2. The case was argued before the Court of Appeals on January 24, 1957, on the basis of the 1950 regulation only. On the following day, apparently as a result of the argument, the Board of Regents adopted an amendment to the regulation. The amendment did not alter any of the original language, but added thereto a sentence permitting the use of the name of the optometrist, as well as the word "optometrist", if the sign otherwise complied with the regulation and if it was not illuminated in color. See p. 1a, *infra*.

On March 8, 1957, the Court of Appeals issued its decision (App. A, *infra*) and judgment (App. B, *infra*) sustaining the validity of the regulation as

amended, and ordered the judgment of the courts below modified "by declaring that paragraph g of subdivision 1 of section 70 of the Regulations of the Commissioner of Education adopted on June 15-16, 1950, *and as amended on January 25, 1957,* with respect to the use of signs by optometrists is legally reasonable and therefore valid . . ." p. 2a, *infra* (emphasis by the Court).

The Court thus considered and determined the validity of the regulation *as amended* without ever having afforded Appellants any opportunity whatever to be heard thereon. No evidence was ever taken, no briefs were ever submitted, and no argument was ever made on the amended regulation.

Appellants filed a motion for reargument and to amend the remittitur, which motion was summarily denied (App. C, *infra*). This motion made the express contention that Appellants had been deprived of the due process of law guaranteed by the Fourteenth Amendment, by the action of the Court below. Appellants urged that they had facts bearing on the substance of the amendment to the regulation which were directly pertinent to the cause and which might well have affected the decision of the Court; and on which they had a constitutional right to a hearing. In view of the extraordinary turn of events which Appellants could not ever have reasonably anticipated, this federal question was raised at the first reasonable opportunity, and is accordingly appropriate for review by this Court. *Cf. Great Northern R. Co.* v. *Sunburst Oil Co.*, 287 U.S. 358, 366-7; *Brinkerhoff-Faris Trust Co.* v. *Hill*, 281 U.S. 673, 677-8; *Missouri ex rel. Missouri Ins. Co.* v. *Gehner*, 281 U.S. 313, 320; *Saunders* v. *Shaw*, 244 U.S. 317, 320.

THE QUESTIONS ARE SUBSTANTIAL

I.

The action of the Court below, sustaining the validity of the amended regulation without ever having afforded Appellants any opportunity to be heard thereon, clearly contravened the Fourteenth Amendment under the directly applicable decision of this Court in *Saunders* v. *Shaw*, 244 U.S. 317.

A brief summary of the *Saunders* case is adequate to demonstrate its virtual identity with this case so far as concerns the issue of fair procedure under the Fourteenth Amendment. In that case, the plaintiff at the trial had attempted to prove certain facts, but his proffered evidence was excluded on the defendant's objection, and judgment was granted defendant. This ruling was affirmed by the State Supreme Court. Thereafter, this Court rendered a decision in another case under which the facts which plaintiff had offered to prove became controlling. The State Supreme Court granted rehearing and reversed the judgment for defendant and granted judgment for plaintiff.

On writ of error to this Court, defendant claimed that this procedure had deprived him of any opportunity to controvert the critical facts, thereby denying him his day in court in contravention of the Fourteenth Amendment. In unanimously sustaining this objection, this Court, in an opinion by Mr. Justice Holmes, recognized that the defendant had not been accorded due process of law "because the case had been decided against him without his ever having had the proper opportunity to present his evidence." 244 U.S. at 319. And to the assumption "that it was so plain on the uncontroverted facts . . . that to remand

. . . would be an empty form,—a mere concession to technicality", Mr. Justice Holmes replied: "It may turn out so, but we do not see in the record an absolute warrant for the assumption and therefore cannot be sure that the defendant's rights are protected without giving him a chance to put his evidence in." *Saunders* v. *Shaw, supra,* 244 U.S. at 319.

In this case, Appellants have obviously not been granted protection of their constitutional rights, for they certainly have been given no chance whatever to put their evidence in on the amended regulation, and to present their contentions of law relating to the substance of the amendment. The decision below is thus in irreconcilable conflict with *Saunders* v. *Shaw, supra.*

Even if this were a fresh issue, the procedure followed below is clearly violative of the minimum requirements of due process which this Court has consistently demanded. "Those who are brought into contest with the Government in a quasi-judicial proceeding aimed at control of their activities are entitled to be fairly advised of what the Government proposes and to be heard upon its proposal before it issues its final command." *Morgan* v. *United States,* 304 U.S. 1, 18-19. It is beyond doubt that this requirement was not followed here; it could not be in a case in which the challenged regulation which is under judicial scrutiny is amended *after* the hearing before the Court was completed, and reargument on the altered facts is summarily denied.

Here, as in *Morgan, supra,* 304 U.S. at 19-20, the following analogy is plainly applicable and controlling: "If in an equity cause, a special master or the trial judge permitted the plaintiff's attorney to formulate

the findings upon the evidence, conferred *ex parte* with the plaintiff's attorney regarding them, and then adopted his proposals without affording an opportunity to know their contents and present objections, there would be no hesitation in setting aside the report or decree as having been made without a fair hearing." "The fair hearing essential to meet minimum requirements of any accepted notion of due process includes the opportunity to know of adverse evidence and to be heard concerning its truth, relevancy and significance." *Chernekoff* v. *United States,* 219 F. 2d 721, 723 (C.A. 9).

There was never a hearing on the amended regulation! And the hearing on the regulation as it existed prior to amendment can hardly satisfy the due process requirement. The "right to a hearing means the right to a meaningful hearing." *Gonzales* v. *United States,* 348 U.S. 407, 415.

The bitter unfairness of denying Appellants any right to be heard on the amendment of January 25, 1957 is heightened by the lengthy history of this litigation. The original regulation was promulgated over seven years ago, in June, 1950. Appellants promptly challenged it. They obtained an injunction against its enforcement, which was sustained on appeal. Appellees sought judgment without trial, but this was denied; and this denial was affirmed on Appellees' appeal. Finally, the case was tried, and tried on the basis of the 1950 regulation. In three different courts, including the Court below, the issues revolved only about the 1950 regulation. After this protracted and thorough discussion and review, the issue was changed suddenly. By unilateral action; Appellees shifted the focus of the suit. And when Appellants simply asked

to be heard on the new regulation, their request was denied summarily!

Surely there is every reason on this record to hold that the decision below reduced Appellants' rights in the litigation to "the level of a game of blindman's buff." *Simmons* v. *United States*, 348 U.S. 397, 405. This Court should not suffer the decision below to stand unreviewed and unreversed.

II.

By designating the use of certain signs and displays by optometrists as unprofessional conduct, the challenged regulation—both before and after amendment—in practical effect prohibits optometrists from using such signs and displays. A limitation in the use of signs and displays is of course within the competence of the State in the exercise of its police power, and in the courts below Appellants conceded that the State, if it saw fit, could prohibit the use of all signs by all persons who deal with the human eye.

But the original regulation adopted on June 15-16, 1950, and the regulation as amended on January 25, 1957, apply to optometrists alone of all whose work is with the human eye. Despite other important distinctions between the original and the amended regulation, both therefore present questions under the Equal Protection Clause of the Fourteenth Amendment, for they rest on distinctions which seem arbitrary and irrational, and classifications which, in practical effect, are discriminatory. *Cf. Skinner* v. *Oklahoma*, 316 U.S. 535; *Mayflower Farms* v. *Ten Eyck*, 297 U.S. 266; *Smith* v. *Cahoon*, 283 U.S. 553; *Quaker City Cab Co.* v. *Pennsylvania*, 277 U.S. 389.

Optometrists perform the same services as ophthalmologists and oculists when examining or refracting eyes for visual defects and are, in this respect, in economic competition with these professional groups (R. 32-48, 72-80, *passim*). Similarly, optometrists perform services identical to opticians and ophthalmic dispensers when repairing broken frames or lenses, or when filling prescriptions for eye-glasses, whether these prescriptions are their own or those of another optometrist, or of an oculist or ophthalmologist. In the performance of these functions, the optomertist is in direct economic competition with opticians and ophthalmic dispensers (*Ibid.*).

The challenged regulation takes no cognizance of these hard economic realities. The standards it imposes —however commendable—apply to optometrists alone; and those in economic competition with optometrists, performing essentially the same functions and services, are not included in its compass. An optometrist and an optician may face one another on different sides of the same street; but the regulation prevents the optometrist from displaying his name and calling in the same manner as the optician.

Requiring only a portion of the same economic or functional classification to adhere to lofty standards while other segments of the group are at liberty to follow their own commercial inclinations, is an arbitrary and discriminatory use of the regulatory power of a state. For this reason this case presents a picture completely different from *Williamson* v. *Lee Optical Co.*, 348 U.S. 483.

While the *Williamson* case indicates that a State has substantial leeway under the Equal Protection

Clause, 348 U.S. at 489, it did not hold that all constitutional standards could be disregarded in this economic field. In that case, this Court declared: "We see no constitutional reason why a State may not treat all who deal with the human eye as members of a profession who should use no merchandising methods for obtaining customers." *Id.* at 490. It is precisely because *all* who deal with the human eye have *not* been treated alike by the challenged regulations in this case that Appellants maintain that they have not been given the fair and reasonable treatment required by the Equal Protection Clause.

By a distinction which is plainly arbitrary and which wholly ignores business reality and economic fact, New York has singled out the optometrists for special treatment by drastic regulation. Other groups in direct economic competition with optometrists and who perform the same functions and services are not inhibited by this regulation in their use of merchandising methods. "Despite the broad range of the State's discretion, it has a limit which must be maintained if the constitutional safeguard is not to be overthrown." *Hartford S.B.I. & Ins. Co.* v. *Harrison*, 301 U.S. 459, 462. In focusing only upon optometrists when there is no rational basis for doing so, the challenged regulation appears to have gone even beyond the broad range permitted by this Court's decisions and has denied Appellants "the equal protection of the laws" guaranteed by the Fourteenth Amendment.

CONCLUSION

It is submitted that the decision of the New York Court of Appeals clearly contravenes the Fourteenth Amendment. By sustaining the amended regulation which was not adopted until after the argument before it, and by denying Appellants any hearing on the amended regulation, the Court of Appeals denied Appellants due process of law. By sustaining a regulation directed against optometrists only and not affecting others in direct economic competition performing the same functions and services, the Court of Appeals denied Appellants the equal protection of the laws. We believe that the questions presented by this appeal are substantial and that they are of public importance, and if the decision below is not summarily reversed for the obvious failure to accord Appellants that fair hearing which is their constitutional due, the questions presented clearly merit the plenary consideration of this Court.

Respectfully submitted,

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APPENDIX A

STATE OF NEW YORK
COURT OF APPEALS

No. 367

IRVING STRAUSS, & ORS., &c., *Appellants*,

v.

THE UNIVERSITY OF THE STATE OF NEW YORK, & ORS., &c., *Respondents*.

Opinion

FULD, J.:

We decide the case, as it must be decided (see, e.g., *Black Riv. Reg. Dist.* v. *Adirondack League Club*, 307 N.Y. 475, 486-487; *Quaker Oats Co.* v. *City of New York*, 295 N.Y. 527, 536; *Boardwalk & Seashore Corp.* v. *Murdock*, 286 N.Y. 494, 498), on the basis of the law as it exists today. On January 25, 1957, which was the day following the argument of the appeal in this court, the regulation here involved was amended to add this sentence:

> "Nothing herein contained shall be deemed to prevent the illumination of a sign setting forth the name of the practitioner and the word 'optometrist' provided that the illumination is not colored and such sign does not otherwise conflict with this regulation."

Whether or not the regulation in its original form proscribed all "illuminated" signs, we need not consider, for it is plain beyond any doubt that, by the amendment quoted above, it allows the use of an illuminated sign setting forth the name of the practitioner and the designation "optometrist," provided the illumination is not colored. The prohibitions contained in the regulation relating to the number and size of signs that may be used are reasonable and valid and, of course, are the other proscriptions aimed at

glaring and flickering signs, as well as other signs that are illuminated.

The judgment should be modified by declaring that paragraph g of subdivision 1 of section 70 of the Regulations of the Commissioner of Education, adopted on June 15-16, 1950, *and as amended on January 25, 1957*, with respect to the use of signs by optometrists is legally reasonable and therefore valid and, as so modified, affirmed, without costs.

* * *

Judgment modified in accordance with the opinion herein and, as so modified, affirmed. Opinion by Fuld, J. All concur.

APPENDIX B

Judgment

COURT OF APPEALS

STATE OF NEW YORK, SS:

PLEAS in the Court of Appeals, held at Court of Appeals Hall, in the City of Albany, on the 8th day of March in the year of our Lord one thousand nine hundred and fifty-seven, before the Judges of said Court.

Witness,

THE HON. ALBERT CONWAY,
Chief Judge, *Presiding.*

RAYMOND J. CANNON, *Clerk.*

Remittitur March 8, 1957.

No. 367.

IRVING STRAUSS, & ORS., &C., *Appellants,*

v.

THE UNIVERSITY OF THE STATE OF NEW YORK, & ORS., &C., *Respondents.*

BE IT REMEMBERED, That on the 13th day of December in the year of our Lord one thousand nine hundred and fifty-six, Irving Strauss, & ors., &c., the appellants in this cause, came here unto the Court of Appeals, by Frank E. Behrman, their attorney, and filed in the said Court a Notice of Appeal and return thereto from the judgment of the Appellate Division of the Supreme Court in and for the Third Judicial Department. And The University of the State of New York, & ors., &c., the respondents in said cause, afterwards appeared in said Court of Appeals by Charles A. Brind, Jr., their attorney.

Which said Notice of Appeal and the return thereto, filed as aforesaid, are hereunto annexed.

Whereupon, The said Court of Appeals having heard this cause argued by Mr. Frank E. Behrman, of counsel for the appellants, and by Mr. Charles A. Brind, Jr., of counsel for the respondents, brief filed by amicus curiae, and after due deliberation had thereon, did order and adjudge that the judgment of the Appellate Division of the Supreme Court appealed from herein be and the same hereby is modified in accordance with the opinion herein and, as so modified, affirmed.

And it was also further ordered, that the records aforesaid, and the proceedings in this Cout, be remitted to the said Supreme Court, there to be proceeded upon according to law.

Therefore, it is considered that the said judgment be modified &c., as aforesaid.

And hereupon, as well the Notice of Appeal and return thereto aforesaid as the judgment of the Court of Appeals aforesaid, by it given in the premises, are by the said Court of Appeals remitted into the Supreme Court of the State of New York before the Justices thereof, according to the form of the statute in such case made and provided, to be enforced according to law, and which record now remains in the said Supreme Court, before the Justices thereof, &c

Raymond J. Cannon
Clerk of the Court of Appeals
of the State of New York.

Court of Appeals, Clerk's Office,
Albany, March 8, 1957.

I Hereby Certify, that the preceding record contains a correct transcript of the proceedings in said cause in the Court of Appeals, with the papers originally filed therein, attached thereto.

Raymond J. Cannon
Clerk.

(seal)

APPENDIX C

Order Denying Motion for Reargument and to Amend Remittitur

STATE OF NEW YORK,

IN COURT OF APPEALS

At a Court of Appeals for the State of New York, held at Court of Appeals Hall in the City of Albany on the twenty-third day of May, A.D. 1957.

PRESENT, HON. ALBERT CONWAY, *Chief Judge, presiding.*

Mo. No. 239

IRVING STRAUSS, & ORS., &C., *Appellants*,

v.

THE UNIVERSITY OF THE STATE OF NEW YORK, & ORS., &C., *Respondents.*

A motion for reargument and to amend the remittitur in the above cause having been heretofore made upon the part of the appellants herein and papers having been submitted thereon and due deliberation having been thereupon had, it is

ORDERED, that the said motion be and the same hereby is denied with ten dollars costs.

A copy

(SEAL)

GEARON KIMBALL
Deputy Clerk

APPENDIX D

Order Extending Time for Filing Record and Docketing Appeal

At a Special Term of the Supreme Court of the State of New York, held in and for the County of Albany, at the Courthouse thereof, Albany, New York, on the 9th day of September, 1957.

PRESENT: HON. ISADORE BOOKSTEIN, *Justice.*

[Caption Omitted]

On reading and filing the affidavit of Frank E. Behrman, verified the 6th day of September, 1957, and upon all the proceedings and applications had heretofore, duly presented to the Justice of this Court, praying for an order and setting forth the facts necessary for an extension of time within which to file and docket an appeal herein to the Supreme Court of the United States, up to and including the 12th day of November, 1957,

And due deliberation having been given to the said request and prayer for such extension as heretofore mentioned,

Now, on motion of Frank E. Behrman, attorney for the petitioners, it is

ORDERED, that the time within which the record on appeal may be filed and the appeal docketed to, in the court herein, be and the same hereby is extended to and including November 12, 1957.

ISADORE BOOKSTEIN
J.S.C.